

## **CHAPTER 16: CLOSING THE LOAN AND REQUESTING THE GUARANTEE**

### **7 CFR 3555.107**

#### **16.1 INTRODUCTION**

The lender is required to comply with all conditions stated on *Form RD 3555-18* and any attachments, as applicable. Lenders must ensure a marketable title to the real estate is obtained, close the loan, submit closing documentation, and request the guarantee within 30 days of loan closing. The loan must close under the same terms it was underwritten and approved for the conditional commitment. Loans cannot close for greater than the loan amount approved on the conditional commitment or for an interest rate greater than approved without prior Agency approval. The signatures of all individuals appearing on the loan application must appear on the mortgage and Promissory Note. In addition, all owners of the mortgaged property, or individuals who are required by state law to create a valid first lien, pass clear title, or waive inchoate rights to property, must sign the security instruments.

#### **16.2 CLOSING THE LOAN**

The lender has 90 days from the issuance of *Form RD 3555-18* to close the loan. If construction is involved, the requested expiration date of *Form RD 3555-18* will correspond with the projected completion of construction (i.e. Florida may have a new construction period of six months, so the expiration of the commitment issued would coincide with the construction period). Prior to expiration of the conditional commitment the lender may request the Agency extend the conditional commitment for one additional 90-day period if the lender has been unable to close the loan due to circumstances beyond their control. Examples of valid reasons for extensions might include construction delays due to weather conditions, or an inability to obtain construction materials resulting in work postponement. The Agency must grant any approved extension in writing, either through a letter or a fax that includes a signature of an approval official. Extensions of the term of the Conditional Commitment must be maintained in the lender's case file. The GLS application page will be updated with the commitment extension.

Closing in Compliance with Conditional Commitment Approval. The loan must close under the same terms it was underwritten and approved for the conditional commitment unless the change does not adversely affect loan approval (i.e. lower loan amount, lower interest rate). In the event there are any changes in the loan terms, characteristics of the applicant, or characteristics of the property, between the issuance of *Form RD 3555-18* and loan closing, or if any conditions or requirements imposed by the Agency will not be met, the lender must notify the Agency in writing. The Agency must verify in writing prior to loan closing that the changes are acceptable. Examples of

changes that the Agency would need to review include increases in the interest rate, loan amount or changes in borrower status, such as an increase or reduction in household income.

Signatures. All individuals applying for the loan and assuming responsibility for the mortgage debt must sign the URLA and any addenda. Any individual whose signature is required by state laws (for example - a non-purchasing spouse) must sign the security instruments and/or note in order to create a valid first lien, to pass clear title, or to waive inchoate rights. All owners to be vested in title must sign the security instruments except as noted in this section. Additional signatures on the security instruments for individuals who have not been reviewed during the mortgage credit analysis may jeopardize issuance of the loan note guarantee. Lenders may not have borrowers sign documents in blank, incomplete documents or blank sheets of paper.

A Power of Attorney may be utilized for closing documents. Any specific or general power of attorney must comply with state law, and allow for legal enforcement of the mortgage note in jurisdiction. The initial loan application may not be executed by a power of attorney except for military personnel on overseas duty or on an unaccompanied tour and incapacitated borrowers unable to sign the mortgage application. For service personnel, the lender should obtain the service person's signature on the application by mail or fax machine. When a borrower is incapacitated and unable to execute the application, the lender must provide evidence that the signer has authority to purchase the property and to obligate the borrower.

Electronic signatures in accordance with the conditions outlined in Section 15.4 of Chapter 15 of this handbook may be accepted.

Interest Credit Closing. To reduce the burden on borrowers whose loans were scheduled to close at the end of the month, but did not due to unforeseen circumstances, lenders and borrowers may agree to credit the per diem interest to the borrower and have the mortgage payments begin the first of the succeeding month.

Lender Certification. The lender must sign *Form RD 3555-18* or will be subject to electronic certification when using the Agency's automated method of loan closing, to certify that no major changes have taken place that would affect eligibility for the loan guarantee, except those approved by the Agency in writing, and that all conditions specified on *Form RD 3555-18* have been met.

### **16.3 REQUESTING A LOAN GUARANTEE**

Within 30 days after the lender closes the loan, the lender must request issuance of the loan guarantee using *Form RD 1980-19* or equivalent automated means, provided by the Agency.

*Form RD 1980-19* will not be required when the lender uses the automated method of loan closing. The lender will be subject to electronic certification.

The lender must provide evidence the loan was properly closed and remit the up-front loan guarantee fee. A lender utilizing the automated method of loan closing will submit the up-front loan guarantee fee through pay.gov.

A Loan Note Guarantee may not be issued beyond 30 days of the loan closing if the account is in default. Lenders may utilize Attachment 16-A as a checklist for assuring all loan closing documentation is submitted to Rural Development when requesting the Loan Note Guarantee.

If the loan closing documentation and request for guarantee is not submitted within 30 days of loan closing and the loan account is in arrears when a request for loss payment under the guarantee is made, the Agency reserves the right to review the underwriting. If the Agency determines the loan was not underwritten in accordance with Agency requirements, the guarantee may not be issued or if previously issued, may be withdrawn.

**Three methods for requesting the loan guarantee are available to lenders.** The preferred method for submitting loan guarantee requests is through the Agency's Lender Loan Closing automated method. Paragraph B below outlines the expectations of automated loan closing. All lenders are expected to submit loan closings electronically through the automated method provided by the Agency.

A lender may request a loan guarantee by submitting full documentation and a check for the guarantee fee to the Rural Development Office who issued the Conditional Commitment; or a lender may enter into an agreement to electronically submit loan closings and guarantee fees; or if the lender has demonstrated a consistent knowledge of the loan closing process, has a proven record of submitting complete documentation in compliance with conditions outlined in *Form RD 3555-18*, a lender may be conditionally authorized to submit abbreviated documentation when requesting the loan guarantee. The expectation is that lenders will utilize the Agency's automated method of lender loan closing, further explained in Paragraph B below.

#### **A. Requesting the Loan Guarantee – Full Documentation**

When requesting a Loan Note Guarantee, the lender must submit the following loan closing documents to the Rural Development office who issued the Conditional Commitment. Attachment 16-A provides a stack order and document identification checklist for lenders:

- *Form RD 1980-19* (fully executed and dated by lender). This form is not required when a lender electronically submits their loan closing noted in Paragraph B of this Section;

- Signed *Form RD 3555-18*. This certification is a confirmation the lender has properly closed the loan in accordance with the conditions of the Conditional Commitment. This form is not required when a lender electronically submits their loan closing noted in Paragraph B of this Section;
- Final settlement statement. The settlement statement is not required to be signed;
- Promissory note;
- Guarantee fee check payable to Rural Development for the correct amount of fee. Review Paragraph 16.4 regarding information on calculating the correct guarantee fee due. The fee will be transmitted through a pre-authorized debit for lenders who electronically submit loan closings in accordance with Paragraph B of this Section;
- Any other necessary documentation as specified in the conditions; and
- The specific address (and/or email address) of where to deliver the Loan Note Guarantee. Those lenders who electronically submit loan closings will be notified via e-mail to retrieve their Loan Note Guarantee, once processed by the Agency.

#### **B. Request for Loan Guarantee – Electronic Closing**

Rural Development offers approved lenders the ability to submit guaranteed loan closing transactions to the Agency via the internet. **This method is the preferred method of requesting a Loan Note Guarantee.** This online capability eliminates the need for lenders to manually complete and submit *Form RD 1980-19* and the *Lender Certification portion of Form RD 1980-18*. Lenders submit the guaranteed loan closing fee through a secure government internet collection portal that is used by the federal government to collect non-tax revenue called “pay.gov,” a pre-authorized debit payment system.

Loans will be closed online through the Agency’s data base and loan tracking system – the Guaranteed Loan System (GLS). Lenders who utilize this system will be required to enter into a User Agreement and obtain authorized access through the use of an eAuthentication account and password. An on-line user guide and information for lenders can be found at:

<https://usdalinc.sc.egov.usda.gov/USDALincTrainingResourceLib.do>. Scroll to “Lender Loan Closing/Administration.”

Rural Development can access an employee user guide at the Agency’s SharePoint website.

Lenders will continue to submit the following by attaching the document(s) to the lender loan closing application to receive a Loan Note Guarantee:

- Final settlement statement. The date of closing is considered the settlement date on the HUD-1 Settlement Statement, Block I. This date must be entered on the Add Loan Closing screen in GLS. The settlement statement is not required to be signed;
- Promissory Note;
- Any other necessary documentation as specified in the conditions; and

**C. Requesting a Loan Guarantee – Self-Certification**

The Agency will accept a certification without submittal of documentation of conditions precedent to issuance of *Form RD 3555-18*. To utilize this option, a lender must obtain prior authorization from the state and will be subject to compliance sampling reviews. This option will continue to require the lender to submit the guarantee fee, *Form RD 1980-19* if submitting a manual request for loan note guarantee as outlined in Paragraph A of this Section, a Promissory Note and the final Settlement Statement. If the lender submits a closing in accordance with Paragraph B of this Section, the lender will be relieved of submitting *Form RD 1980-19* and the *Lender Certification portion of Form RD 1980-18*. The guarantee fee will be remitted electronically upon submitting the electronic closing through the Agency's GLS website.

States may authorize lenders for this option if conditions are met as follows:

- The lender has an active lender agreement.
- The lender is actively engaged in originating SFHGLP loans and has closed a minimum of ten loans in the past twelve months.
- The lender has successfully submitted ten consecutive loan closings to the Agency that were in compliance with loan closing requirements and procedures described in this Chapter.

Lenders authorized to participate in this option will retain the actual documentation confirming closing conditions outlined in *Form RD 3555-18* are met in the lender's permanent case file. If the lender fails to meet the requirements noted in this Paragraph,

documentation as described in Paragraph A or B (as applicable) of this Section will be required.

States will retain evidence of their authorization to the lender to participate in this option in the Agency's lender folder in the operational filing system. Lenders who meet the criteria of this paragraph and are authorized by Rural Development to submit a certification in lieu of documentation of actual loan closing conditions will be subject to a periodic review.

Annually, Rural Development will perform a periodic review of loan closing documents for Lenders who are authorized to submit a certification in accordance with the terms of this Paragraph. Reviews will be performed by the authorizing state.

The purpose of the review is to ensure conditions precedent to issuance of *Form RD 3555-18* was met prior to loan closing. The State Director will establish the percentage of loans reviewed. The sampling percentage established by the State Director should consider factors such as loan delinquencies, loan losses, and failure to submit required reports or other such reasons related to assuring the Government's interest is adequately protected. The National Office recommends at minimum of five percent or more.

Reviews will confirm the lender's permanent case file contains evidence:

- The lender closed the loan in accordance with conditions precedent to issuance of *Form RD 3555-18*.
- The proceeds of the loan were expended for the purposes described in the loan application and represented on *Form RD 3555-21*.
- The lender performed inspections in accordance with Chapter 12 of this Handbook.
- Escrow accounts were established in accordance with Chapter 12 of this Handbook.
- The loan closed prior to expiration of the Conditional Commitment as confirmed on *Form RD 3555-18*.

States will retain documentation of loan closing compliance reviews performed in their Operational filing system in accordance with subpart A of part 2033.

## **16.4 UP-FRONT LOAN GUARANTEE FEE**

The lender will pay an up-front guarantee fee, which may be passed from the lender to the borrower. Payment is paid by the lender to the Agency. When a lender is not submitting electronic loan closings, as outlined in paragraph 16.3 above, the fee must be paid with a lender or closing agent check made payable to payable to the Treasurer of the United States; United States Department of Agriculture; Rural Development; or other reasonable variation such as USDA; USDA - Rural Development; or to Rural Development. Lenders who participate in the submittal of electronic loan closings will pay the up-front guarantee fee through pay.gov.

Fees received by check will be processed daily in accordance with subpart B of part 1951. Fees will be returned to the lender if the guarantee is not issued. Once the fee is paid and the guarantee issued, the fee is nonrefundable.

Agency staff should determine that the loan conditions have been met and acknowledge receipt of the lender's request for loan note guarantee within two business days of receipt of receiving complete closing documents.

The up-front guarantee fee is subject to change to maintain a subsidy neutral program required of Public Law 111-212. Future updates, after notification by Federal Register, will be published in Exhibit K, of RD Instruction 440.1, available in any Rural Development office or on the Rural Development website as follows:  
[http://www.rurdev.usda.gov/rd\\_instructions.html](http://www.rurdev.usda.gov/rd_instructions.html).

### **A. Purchase Loans – Up-Front Loan Guarantee Fee**

For “Purchase” loans (i.e. loans on existing properties, proposed new construction or under construction and manufactured housing), the loan guarantee fee is equal to two percent (2 %) of the amount loaned to the borrower. It is not based directly on the purchase price of the property; it is based on the total loan amount.

### **B. Refinance – Up-Front Loan Guarantee Fee**

For “Refinance” loans (i.e. loans to refinance an existing Section 502 Direct or Guaranteed Loan, the loan guarantee fee is equal to two percent (2%) of the amount loaned to the borrower.

### **C. Calculation of Up-Front Loan Guarantee Fee**

The maximum loan amount for a guaranteed loan is 100% of the appraised value plus the guarantee fee. The guarantee fee can be included in the principal loan amount.

Closing costs and fees may also be included in the loan amount up to 100% of the appraised value for purchase transactions. The maximum loan-to-value (LTV) allows financing the guarantee fee over and above the appraised value of the property. When financing the guarantee fee over and above the appraised value of the property, the foundation for calculating the guarantee fee is the loan amount before the guarantee fee is calculated.



### **1. *Financing the Entire Up-Front Guarantee Fee***

The borrower may elect to finance the entire guarantee fee. When financing the guarantee fee, the total loan may exceed the appraised value of the property only by the amount of the guarantee fee being financed.

#### ***Example/Purchase Loan:***

The appraised value of the subject property is \$100,000. In this example, the purchase price of the property is \$98,000. The borrower has elected to finance \$2,000 in eligible loan closing costs (these costs do not reflect any portion of the guarantee fee). The entire guarantee fee will be financed. The guarantee fee must be calculated on the base loan amount. To finance the entire fee, begin with the base loan amount of \$100,000 (\$98,000 purchase price plus \$2,000 eligible closing costs). Calculate the total loan amount including the guarantee fee as follows:

$$\$100,000 / .98 = \$102,040.82 \text{ (Loan amount including the guarantee fee)}$$

$$\$102,040.82 \times 2\% = \$2,040.82 \text{ (Guarantee fee)}$$

#### ***Example/Refinance Loan:***

A refinance request includes payment of principal and interest payoff, plus closing costs which equal \$100,000 (a non-streamlined refinance type). The appraised value is \$100,000. The entire guarantee fee will be financed. The total loan amount including the guarantee fee may be calculated as follows:

$$\$100,000 / .98 = \$102,040.82 \text{ (Loan amount including the guarantee fee)}$$

$$\$102,040.82 \times 2\% = \$2,040.82 \text{ (Guarantee fee)}$$

### **2. *Financing Part of the Up-Front Guarantee Fee***

The borrower may elect to finance only a portion of the guarantee fee. In these cases, the borrower will pay a fee that corresponds to the total loan amount that includes the partial fee. The remaining amount of the guarantee fee, which is not financed, will have to be paid by the borrower from personal funds, seller concessions or eligible gift assistance at settlement. Using the example of a \$100,000 loan for a property appraised at \$100,000, review the partial fee scenarios below.

#### ***Example/Purchase and Refinance (non-streamlined transaction):***

\$1,000 of the 2 percent fee will be financed; therefore the total loan amount will be \$101,000.

$$\$101,000 \times 2\% = \$2,020.00 \text{ (Guarantee fee)}$$

In this scenario, the applicant will borrow \$101,000 which includes \$1,000.00 of the guarantee fee. The borrower will have to pay the remaining \$1,020.00 of the guarantee fee from personal funds at settlement (\$2,020.00 total fee minus the \$1,000.00 financed = \$1,020.00).

### **3. *Not Financing the Up-Front Guarantee Fee***

Borrowers are not required to finance the guarantee fee and may elect to pay the entire fee amount out of personal funds, seller concessions or by eligible gift assistance at settlement. In the example of a \$100,000 loan for a property appraised at \$100,000, the borrower may save money by paying the fee out-of-pocket. Since the fee is not financed into the loan amount, it is not considered part of the total loan.

#### ***Example/Purchase and Refinance (non-streamlined transaction):***

$\$100,000 \times 2\% = \$2,000.00$  guarantee fee due at loan closing.

Borrowers can avoid paying interest on a higher principal loan amount and/or a higher guarantee fee if they elect to pay the fee at settlement.

NOTE: An up-front fee calculator is available for use by lenders and employees at the following website:

<https://usdalinc.sc.egov.usda.gov/USDALincTrainingResourceLib.do>

## **16.5 ANNUAL FEE**

The lender will pay an annual fee, which may be passed from the lender to the borrower. Payment is paid by the lender to the Agency. Payment will be made electronically from the lender to the Agency. The servicing lender responsible for payment will be required to enter into a User Agreement to electronically receiving billing notifications and submit payment. Non-payment of the annual fee will be subject to a late charge if not paid by the due date. Information regarding the amount of annual fee and late charge due if not paid can be found in Exhibit K of RD Instruction 440.1, available on the Rural Development website as follows:  
<http://www.rurdev.usda.gov/RegulationsAndGuidance.html> . The annual fee is subject to change annually to maintain a subsidy neutral program.

Both purchase and refinance transactions will be subject to an annual fee.

Information for gaining access to the Agency's Guaranteed Annual Fee system can be found at the following website under the "Training and Resource Library." Scroll to "Lender Loan Closing/Administration."

<https://usdalinc.sc.egov.usda.gov/RHShome.do>

**A. Amount of Annual Fee**

The lender shall pay the Agency an amount equal the published annual fee imposed (assessed in the FY the loan closed) of the average scheduled unpaid principal balance of the mortgage for the 12-month period preceding each billing due date, as further described in this section. Annual fee accrual begins on the first calendar day of the month proceeding the settlement date.

**B. Calculation of Annual Fee**

The amount of any annual fee shall be calculated in accordance with the original amortization provision of the mortgage, without taking into account delinquent payments, prepayments, agreements to postpone payments or loan modifications (reamortization) of the original mortgage.

**C. Due Date of Annual Fee**

The annual fee shall be due and payable to the Agency on the 1<sup>st</sup> day of the billing month. A grace period applies to payments credited through the 15<sup>th</sup> day of the billing month. Electronic payments submitted on a business day prior to 7:00 p.m. central time will credit the next business day. Electronic payments after 7:00 p.m. central time, or on a non-business day, will credit two business days later.

**D. Payment of Annual Fee**

The lender shall pay the annual fee to the Agency annually.

**E. Advance Notice, Billing and Reconciliation of the Annual Fee**

Lenders will receive an advance notice 2 months prior to the current annual fee due date, which will provide the annual fee amount to be collected in the subsequent year. The advance notice is a notification of the next annual fee amount based upon the amortization schedule which will accompany the Loan Note Guarantee for any loan subject to an annual fee. An advance notice allows a lender to adjust a borrower's escrow collection to accommodate the next scheduled billing period. Advance notices are generated on the first business day of the month.

The annual fee billing file will be available to the lender on the anniversary closing month of the loan each year. Payment of any annual fee billed with the due to the Agency on the 1<sup>st</sup> day of the month following the anniversary date of loan settlement.

The billing file will outline the current annual fee amount due, all past due annual fee amounts, and all late charge amounts due for each individual loan in the lender's portfolio subject to an annual fee.

A late fee will be assessed if the annual fee due on the 1<sup>st</sup> day of the month remains unpaid by the 15<sup>th</sup> day of the month. A secondary late fee may be assessed if the annual fee billed remains unpaid on the last day of the month.

#### **F. Lender's Late Charge on Unpaid Annual Fee**

Payments received by the Agency after the payment dates prescribed in this section and supported by §3555.107(i) of 7 CFR 3555 shall include a late charge of four percent of the unpaid fee amount.

In addition to the initial late charge provided, the lender may be assessed an additional late charge on any annual fee remaining unpaid after the last day of the month in which payment was due. This additional late charge will be 1% of the unpaid annual fee amount.

#### **G. Period Covered by Annual Fee**

The initial annual fee shall cover the period effective with the first day of the calendar month following the settlement date and ending on the last day of the settlement anniversary month. Subsequent annual fee payments shall cover the twelve-month period preceding each subsequent anniversary date.

#### **H. Duration of Annual Fee**

The lender shall pay the annual fee to the Agency until termination. Termination of a case must be reported to the Agency within 15 days of the actual event. Termination may be any of the following:

- When the mortgage reaches maturity.
- At prepayment. The borrower paid the mortgage in full prior to the maturity date or by an approved short payoff.
- Foreclosure. The property was acquired by a lender or third party at a foreclosure sale.
- Voluntary conveyance. The property was conveyed to the lender through an approved deed-in-lieu of foreclosure agreement.

#### **I. Pro rata Payment of the Annual Fee**

If the loan note guarantee is terminated prior to the due date of the initial annual fee amount due, the lender shall pay a prorated portion of the initial fee. The initial annual fee is prorated by month beginning with the month proceeding the settlement date. The lender must determine how many months of the scheduled annual fee period have elapsed at the time of termination. Regardless of what day of the month the loan is terminated; the entire month in which termination occurs will be included in the prorated calculation.

If the loan note guarantee is terminated after the due date of the initial annual fee payment, the lender shall pay a prorated portion of the current annual fee prorated from the due date of the last annual fee to the date of termination.

A pro rata annual fee shall be due and payable after the institution of foreclosure is complete. The lender shall pay a portion of the current annual fee prorated from the due date of the last annual fee to the date of settlement.

#### **J. Method of Payment of the Annual Fee**

Payment of the annual fee will be remitted electronically. Implementation and technical guides surrounding electronic payment of the annual fee may be found on the USDA LINC website at the Training and Resource Library link:

<https://usdalinc.sc.egov.usda.gov/RHShome.do>

#### **K. Nonpayment of the Annual Fee**

If for any reason the lender fails to pay the scheduled annual fee payment, any loss payment due the lender of the individual case in default shall be reduced by the cumulative amount of unpaid annual fees, late fees and/or additional late charges due the Agency.

Lenders are subject to termination of their eligibility to participate in the SFHGLP due to nonpayment of the annual fee in accordance with §3555.52(c)(1) of 7 CFR 3555 and Chapter 3 of this Handbook.

### **16.6 AGENCY REVIEW OF CLOSING DOCUMENTS AND ISSUANCE OF THE GUARANTEE**

The Agency will review and acknowledge receipt of *Form RD 1980-19* (when the form is required to be submitted) and the required loan closing documents within two business days of receipt from the lender. The Agency's review is to ensure all closing documents are completed and the lender has certified all requirements specified on *Form RD 3555-18* have been satisfied. There are three possible outcomes of this review. The Agency may determine the closing documents are incomplete, acceptable, or unacceptable as described below.

#### **A. Incomplete Closing Documents**

If the Agency determines that closing documentation is incomplete, or that there are correctable errors in the loan closing documents, the lender may be granted up to 30 days to correct the situation. Examples of circumstances that may warrant additional time could include missing signature(s) or missing documents in the loan closing file.

The lender will be notified of incomplete packages in writing, typically by e-mail, and, if necessary, by regular mail. Agency staff should make every effort to contact the lender and determine the time required to provide the necessary documentation or information. While the burden of submitting a complete closing package is on the lender, Agency staff should be cognizant that the lender cannot satisfy any investor requirements without possession of the Agency's loan note guarantee. If the loan package is not complete within 30 days, and the account is in default, the Conditional Commitment will not be honored. If the problems with the package cannot be completed within the 30 days granted the lender, the entire loan package will be returned.

#### **B. Acceptable Closing Documents**

If all of the closing documents are acceptable, the Agency will issue the loan note guarantee within 15 calendar days of receipt of the closing package. For those closings submitted without benefit of the Agency's electronic loan closing process, the Agency staff will prepare *Form RD 451-2, "Schedule of Remittances"* to transmit the guarantee fee to the Deputy Chief Financial Officer via the "Lock Box." Lenders who utilize the electronic method of loan closing will submit their guarantee fee electronically through a pre-authorized debit. The Agency will execute *Form RD 3555-17, "Loan Note Guarantee,"* which is the official loan guarantee document. A system generated *Form RD 3555-17E; "Loan Note Guarantee"* will be issued to lenders who request guarantees through the automated loan closing method. Agency staff will enter the information into the Guaranteed Loan System when the closed loan meets the conditions set forth in the conditional commitment. The loan note guarantee does not take effect until *Form RD 3555-17 (or Form RD 3555-17E)* is executed. The Agency will send *Form RD 3555-17 (or Form RD 3555-17E)* and the "Loan Amortization Schedule," which outlines any annual fees due on the loan, to the lender for attachment to the promissory note. For those transactions submitted without benefit of the Agency's electronic loan closing, the Agency will transmit the executed *Form RD 3555-17* and the "Loan Amortization Schedule" electronically. The Agency retains a copy for the Agency's imaging repository. For those lenders utilizing the electronic loan closing, the Agency will notify the lender to retrieve *Form RD 3555-17E* and the "Loan Amortization Schedule" upon completing a review of closing documents.

#### **C. Unacceptable Closing Documents**

The Agency will not issue the loan guarantee if there are significant errors in the closing documents, or if the loan does not meet all program requirements. For example, if the lender failed to meet all of the conditions set forth on *Form RD 3555-18* or if the lender failed to obtain first lien position, the loan will not qualify for a guarantee. The loan note guarantee will not be issued in the event the applicant receives cash back at closing in excess of the amount the borrower paid out of pocket for costs such as a deposit, earnest money, an appraisal, or other allowable items that may be financed with

the guarantee. Loan funds or seller paid concessions may not be disbursed to the applicant(s). Loan fees paid by the applicant(s) with credit cards or other short terms loans may not be reimbursed at closing. If the lender is required to reimburse an applicant as the result of erroneous preparation of the Good Faith Estimate (GFE), the funds may be provided to the applicant. This type of payment is represents a penalty due from the lender.

If the Agency determines the loan note guarantee cannot be issued, the Agency will notify the lender of the reasons and provide review and appeal rights as described in Appendix 3. The guarantee loan funds will not be deobligated until all appeal rights have been concluded, even if this process continues across fiscal years. If the Agency is upheld on appeal, Agency staff will release the obligated funds once all additional reviews of the appeal is concluded. Agency staff will de-obligate the funds in GLS. If the Agency's decision to deny the loan is overturned, the approval official will, immediately, take the necessary steps to issue the loan note guarantee.

## 16.7 CLOSING DATE

In real estate sales transactions, the closing date is the final procedure in which documents are executed and/or recorded and the sale (or loan) is completed. The closing date will be captured on the *GLS Add Loan Closing* screen. The date of closing will be defined as the **settlement date as it appears on the HUD-1 Settlement Statement**.

Borrowers may elect an interest credit settlement. With this type of settlement, interest will be paid at closing to the previous first of the month. The maturity date for this type of settlement will be slightly less than 30 years. Example: Borrower closes loan October 3, 2011. For most loan closing settlements, interest would be paid from the settlement date to the beginning of the next month, November 1, 2011. The first payment would be due December 1, 2011. The maturity date would be November 1, 2041. Should the borrower elect an interest credit settlement, fewer funds are required at closing. Interest would be paid to the previous first of the month, October 1, 2011. The first payment would begin November 1, 2011 and the maturity date would be October 1, 2041 in this example.

## 16.8 DUPLICATE LOAN NOTE GUARANTEE

It remains the lenders responsibility to inform the Agency of the delivery address to which *Form RD 3555-17or 3555-17E* and the "Loan Amortization Schedule" should be sent. The preferred method will be electronic. Lenders should include this information with the guarantee request. For those lenders who utilize electronic loan closing, the lender will be notified by the Agency when the guarantee and loan amortization schedule are ready for retrieval by the lender.

Occasionally a lender may request a certified copy or a duplicate original of *Form RD 3555-17*. Many investors accept a certified copy, or scanned copy, while others require a duplicate original. A lender's request for a certified copy, scanned copy or duplicate original of *Form RD 3555-17 or 3555-17E* will be honored. Lenders who utilize the electronic loan closing method may retrieve the form through GLS. This type of duplicate will be identified as a "Reissued Loan Note Guarantee,"

## **16.9 SELLING LOANS**

The lender may sell guaranteed loans, but they must follow the requirements described in Chapter 4, Paragraph 4.6 of this Handbook.

## **16.10 ACCEPTABLE LIEN POSITION**

The lender must have first lien position at closing. However, the lender may permit junior liens as long as:

- The lien will not interfere with repayment of the loan and has been considered in the underwriting process;
- The total value of all liens on the property is less than or equal to the property's market value, except when a "soft-second" for down payment or closing costs assistance creates the overage; and
- The junior lien is for an authorized loan purpose.

## **16.11 OWNERSHIP REQUIREMENTS**

If the applicant defaults on the loan, the lender must be able to foreclose on the property to settle the debt. After the loan is closed, the applicant must have an ownership interest that protects the security property.

### **A. Lender and Agency Responsibilities**

After closing, the lender must compare the deed of trust or real estate mortgage with the title opinion to assess lien priority, assure the collateral is accurately covered, verify the date and time record, and ensure that the loan closing instructions have been followed. The Agency does not set policy for survey requirements; however, it is the lender's responsibility to adequately ensure that ownership interest that protects the security property has been obtained after the loan is closed. If the borrower defaults on the loan, the lender must be able to foreclose on the property to settle the debt. If the lender failed to obtain all required security, the originating lender may be subject to indemnification if a loss claim request is made to reflect the lender's failure to meet the lien requirements.



## **B. Acceptable Forms of Ownership**

The two forms of ownership acceptable to the Agency are fee-simple and secure leasehold.

### **1. *Fee-Simple Ownership***

The most common form of ownership is fee-simple ownership under which the borrower holds a fully marketable title to the property. This title is evidenced by a deed that vests full interest in the property to the borrower as mortgagor.

### **2. *Secure Leasehold Interest***

Although fee-simple ownership is preferable, the borrower may have a secure leasehold interest in the property. Leasehold interests are acceptable when all of the following conditions are met.

- The applicant must be unable to obtain fee-simple title to the property, and the rent charged for the lease must not exceed the rate paid for comparable leases. This must be documented in the appraisal.
- The lessor must own the fee-simple title. This provision does not apply to a lessor who is a Native American possessing a leasehold interest on restricted land. Trust or restricted land must remain in trust or restricted status. In these cases, the mortgage, deed of trust, leasehold interest or other security interest must be approved by the Secretary of the Interior. Each State should issue a supplement to give guidance about making loans under these circumstances.
- Leasehold estates are an accepted practice and readily marketable in the area where the subject property is located.
- Neither the leasehold nor the fee-simple title may be subject to a prior lien unless the Agency authorizes acceptance of the prior lien before loan approval.
- The lease is recorded.
- The lease must be in writing, and contain all of the following provisions:
  - The lessor's consent to allow the lender's mortgage.
  - The right of the lender to foreclose and sell the property without restrictions that adversely affect the market value of the property.
  - The right of the lender to bid at a foreclosure sale or to accept voluntary conveyance of the property in lieu of foreclosure.

- The right of the lender to occupy, sublet, or sell the property should the leasehold be acquired through foreclosure, voluntary conveyance, or abandonment.
- The right of the applicant to transfer the leasehold and lender mortgage to an eligible transferee who will assume the lender's debt if the borrower defaults or is unable to continue with the lease.
- A negotiated agreement with the lessor before the leasehold interest is approved regarding the lender's obligation to satisfy unpaid rent or other charges accrued before or during the time the lender has possession of or title to the leasehold. During negotiations, the lender should consider the length of time it will take to foreclose, how much the Agency would be responsible for, and when the lender would have to pay.
- Fair compensation to the borrower for any part of the property taken by condemnation.
- The unexpired term of the lease must be at least 150 percent of the term of the mortgage.
- The language regarding amendments to mortgages with leasehold interests, specified in Attachment 16-B of this Chapter, must be inserted in the mortgage.

## **C. Insurance Policy Requirements**

### ***1. Hazard Insurance***

Until loans are paid in full, lenders must ensure that all borrowers continuously maintain hazard insurance on property securing guaranteed loans to protect the property against fire and weather-related damage. A hazard insurance policy must be in force at the time the loan is closed. All policies must state whether the building is on leasehold since some state laws have specific insurance requirements pertaining to leasehold interests.

Lenders should adopt accepted industry standards for hazard insurance as noted below:

- Hazard insurance providers should have ratings in accordance with the most recent Government Sponsored Enterprise (GSE) requirements.
- Hazard insurance policies should conform to the GSE coverage requirements of "the standard extended coverage endorsement," which states that a policy cannot be accepted that in whole or part excludes wind, hurricane or catastrophe insurance unless the coverage is provided in another policy with the same coverage limits as the hazard policy.

- Borrower occupied properties should have replacement cost coverage in an amount equal to the insured value of the improvements or the unpaid principal balance with hazard or wind deductible(s) of up to but not exceeding five percent of the policy limits. Lender placed policies should have a deductible level of no greater than \$1,000 or 1 percent of the policy limit.

## **2. *Flood Insurance***

If a dwelling is located in a Special Flood Hazard Area (SFHA,) as identified by the FEMA, the community must be located within a National Flood Insurance Program (NFIP) participating community and the borrower must obtain flood insurance. The lender must ensure the borrower continuously maintains flood insurance for the life of the loan and that the policy is in force at the time of loan closing. Flood insurance must cover the lesser of the outstanding principal balance of the loan(s) or the maximum amount of coverage allowed under NFIP. Unless a higher amount is required by state or federal law, the maximum deductible clause for a flood insurance policy should not exceed the greater of \$1,000 or 1 percent of the face amount of the policy.

***Guaranteed Rural Housing***  
**Loan Closing Stacking Order Checklist**

**Lender Instructions:** Submit the identified documents in the order noted with the first document in the bundle being this Attachment. **Submit only the identified documents.** Include complete documentation to ensure an effective file flow. Documents must not exceed the maximum allowable age set forth in 7 CFR 3555 and accompanying Handbook. Rural Development will consider all documents submitted as the certified and true copies of the original documents retained in the lender's permanent file. All copies must be legible. The lender will submit the closing documents and fee so it is received by Rural Development within 30 days of loan closing. The preferred method of delivery is through use of the Agency's automated Lender Loan Closing. Lenders, who have yet to activate LLC, should use the electronic delivery to Rural Development. See <https://usdalinc.sc.egov.usda.gov/USDALincTrainingResourceLib.do> for electronic delivery information by state.

*In the subject line identify the case by:* Loan Closing: Borrower Last Name, First Name

**General Information**

Applicant(s):		Date:
RD Borrower ID:		
Lender Name:	Lender Point of Contact: <i>[Identify who to contact with questions on the closing package, documentation, and/or corrections required]</i>	
Phone #:	Fax #:	Email:

**Identify Delivery Location of Loan Note Guarantee**  
***[Preferred method: Automated Lender Loan Closing]***

Electronic Delivery/Email:	
Regular Mail Delivery:	Attn:

***File Stacking Order Checklist***  
**Post Loan Closing – Issuance of Loan Note Guarantee**

**Please stack the loan closing package in the following document order:**

	<p><b>Form RD 1980-19, "Loan Closing Report"</b></p> <p><b>Note:</b> This form is not required if Lender is participating in automated lender loan closing. The date of closing is defined as the settlement date as it appears on the HUD-1 Settlement Statement, Block I.</p>
	<p><b>Guarantee Fee – Payable to USDA or Rural Development</b> – Include a copy of Page 1 - Form RD 3555-18</p> <p><b>Note:</b> Lenders participating in automated lender loan closing will utilize pay.gov to submit the guarantee fee. If not an automated lender loan closing lender, when submitting electronically, submit the paper check to the physical location noted on the "Identification of Electronic Delivery" at <a href="https://usdalinc.sc.egov.usda.gov/USDALincTrainingResourceLib.do">https://usdalinc.sc.egov.usda.gov/USDALincTrainingResourceLib.do</a> with a copy of Form RD 1980-19, "Loan Closing Report".</p>
	<p><b>Form RD 3555-18, Lender Certification</b></p> <p><i>Lender is certifying all conditions listed or appearing on the commitment and/or GUS Underwriting and Findings Report for this applicant have been fulfilled, the security instrument has been recorded and is a good and valid first lien on the property described.</i></p> <p><b>Note:</b> Lenders participating in automated lender loan closing are not subject to submittal of this certification. For those lenders submitting manually, complete form and execute. Identify servicer and investor, if known. Include all Attachments to Form RD 1980-18. Inspections, plans, warranties are retained in the lender's permanent file.</p>
	<p><b>Promissory Note, copy with appropriate riders, if any</b></p> <p><b>Note:</b> The loan amount of the Promissory Note must be equal to or less than the amount identified on Form RD 3555-18. The interest rate must be equal to or less than the rate identified on Form RD 3555-18.</p> <p><b>Note:</b> Any change of interest rate of loan amount after issuance of Form RD 3555-18 must be approved by RD prior to loan closing.</p>
	<p><b>Final HUD-1 Settlement Statement, copy of final</b></p> <p><i>The submitted form does not require signature.</i></p>
	<p><b>Additional Conditions, as noted on Form RD 3555-18, or supplemented by Attachment</b></p> <p>Submit documentation of required conditions, as applicable. Those conditions indicating the lender should "Retain in Lender's Permanent File" should not be included in post-closing documents.</p>

**ATTACHMENT 16-B**  
**AMENDMENTS TO MORTGAGES WITH LEASEHOLD INTEREST**

The following paragraphs must be inserted in the mortgage. The first paragraph should be placed directly before the legal description of the real estate.

“All Borrower’s right, title, and interest in and to the leasehold estate for a term of \_\_\_\_ years beginning on \_\_\_\_\_, 20\_\_\_\_, created, executed and established by certain Lease dated \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, Page \_\_\_\_ of \_\_\_\_ Records of said County and State, and any renewals and extensions thereof, and all Borrower’s right, title, and interest in and to said Lease, covering the following real estate.”

“Borrower will pay when due all rents and any and all other charges required by said Lease, will comply with all other requirements of said Lease, and will not surrender or relinquish any of Borrower’s right, title, or interest in or to said leasehold estate or under said Lease while this instrument remains in effect.”